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IN THE HIGH COURT OF DELHI AT NEW DELHI

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FAO No.400/2006 & FAO No.401/2006

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5th July, 2011

1. FAO No.400/2006

VISHWA AHIMSA SANGH

..... Appellant

Through: Mr. U.N.Bachawat, Sr. Adv. with
Mr. Kuldeep Pabley, Adv.

VERSUS

PANCHSHEEL MARKETING (P) LTD & ORS.

..... Respondents

Through: Mr. Chetan Sharma, Sr. Adv. with
Mr. A.Mishra & Mr. Prem Murthy, Adv.
for the respondent no.3.
Ms. Sakshi Gupta, Adv. for
Mr. Vishnu Mehra, Adv. for
State Bank of Bikaner & Jaipur.

2. FAO No.401/2006

VISHWA AHIMSA SANGH

..... Appellant

Through: Mr. U.N.Bachawat, Sr. Adv. with
Mr. Kuldeep Pabley, Adv.

VERSUS

STATE BANK OF BIKANER & JAIPUR & ORS.

..... Respondents

Through: Mr. Chetan Sharma, Sr. Adv. with
Mr. A.Mishra & Mr. Prem Murthy, Adv.
for the respondent no.3.
Ms. Sakshi Gupta, Adv. for
Mr. Vishnu Mehra, Adv. for
State Bank of Bikaner & Jaipur.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? **Yes**
3. Whether the judgment should be reported in the Digest? **Yes**

VALMIKI J. MEHTA, J (ORAL)
FAO No.400/2006

1. The challenge by means of this First Appeal filed under Order 43 Rule 1(l) of the CPC is to the impugned order dated 23.11.2006 of the Court below by which the said Court dismissed an application under Order 22 Rule 10 CPC filed by the appellant who claims to be the real society represented through one Mr. M.R.Jain who claims to be the President of the society.

2. The facts of the case are that there is a society registered under the Societies Registration Act, 1860 namely M/s. Vishwa Ahimsa Sangh. This society filed a suit for possession and damages against two tenants namely M/s. Panchsheel Marketing Pvt. Ltd. and M/s. State Bank of Bikaner and Jaipur, the respondent nos.1 & 2 herein. The suit was filed in 1992 by the society through Sh. Dal Chand Jain, who admittedly was its president on the date of filing of the suit.

3. The appellant herein who also calls itself Vishwa Ahimsa Sangh, the selfsame society, through one Mr. M.R. Jain filed an application in the subject suit for possession and mesne profits against the tenants for being impleaded. In the impleadment application, and also as argued before me, the basic stand for substituting the present plaintiff/respondent no.3 society acting through Sh. Dal Chand Jain with the appellant society through Mr. M.R. Jain is that Sh. Dal Chand Jain was acting against interest of the society by creating another trust and saying that the property vested with that trust. This application filed under Order 22 Rule 10 CPC has been dismissed by the Appellate Court by the

impugned order.

4. The parameters of the subject suit are therefore clear that the suit is a suit by the landlord-society against the tenants for possession claiming also the relief of mesne profits. The issues in this case would pertain to the cause of action against the tenant for eviction of the tenant. A suit filed by a society against a tenant cannot be converted into an inter se fight between office bearers of the society as to who can represent the society. If there are disputes and differences as to who represents the society, then the person who claims to correctly represent the society must file a civil suit and in such civil suit take appropriate interim orders so that society can be represented by the allegedly correct person, and who is said to be one Mr. M.R. Jain in the present case. Admittedly, on a query being put to the learned senior counsel for the appellant, it is clear that no civil suit has been filed by Mr. M.R.Jain claiming an entitlement to represent the society and seeking an injunction to prevent Sh. Dal Chand Jain from representing the society.

5. In my opinion, the provision of Order 22 Rule 10 CPC has no application in the facts of the present case. The provision of Order 22 Rule 10 CPC comes into play when there is a devolution of interest in the subject matter of the suit from one person/entity to another person/entity. It cannot be disputed that it is not the case of the appellant that the application under Order 22 Rule 10 CPC is filed on the ground that the interest in the society has devolved upon another society/entity/person. What is really claimed is substitution of the person through whom the

society is to be sued. A society is sued through such office bearers or persons as mentioned in Section 6 of the Societies Registration Act, 1860. On change of office bearers, a new office bearer can continue the suit but that would not mean that there is a devolution of interest under Order 22 Rule 10 CPC. The issue really is the competence to file and continue the suit and not an issue of devolution of interest under Order 22 Rule 10 CPC.

6. It was not disputed by either of the party that the society is governed by Rules & Regulations and as per which Rules & Regulations there is an executive body and which body consists of elected representatives and who are elected every three years. I therefore put it to the learned counsel for the appellant as to whether if the existing person Sh.Dal Chand Jain was not authorized to continue the suit as was the case of appellant/M. R. Jain, then was there any resolution of the executive committee that Sh. Dal Chand Jain was not authorized to continue the suit? This query was put by me because an office bearer is subject to overall control and supervision of the elected executive committee and there are powers in the executive committee, including under Section 6 of the Societies Registration Act, 1860, to substitute one office bearer or person or an agent through whom the suit is filed or is being contested. Accordingly, the present is neither a case of applicability of Order 22 Rule 10 CPC and nor can the substitution be allowed on the basis of Section 6 of the Societies Registration Act, 1860 for the reason that there is no resolution filed of the governing body/executive committee that society henceforth be represented in the suit not through

Sh.Dal Chand Jain but Sh. M.R. Jain, and also because no civil suit has been filed by Sh.M.R.Jain and interim orders obtained therein that he is the president of the society or that the respondent is restrained from representing the society.

7. Learned senior counsel for the appellant sought to press in support of the case of the appellant two judgments of the Supreme Court reported as ***Rikhu Dev vs. Som Dass AIR 1975 SC 2159*** and ***Dhurandhar Prasad Singh vs. Jai Prakash University AIR 2001 SC 2552***.

8. Both the decisions have no applicability to the facts of the present case. In Rikhu Dev's case, the dispute was with regard to a Shiromani Nirankari Dera which was stated to have two branches by the plaintiff in that suit; one branch at Patiala and other branch at Mogha. The defendant in the suit took up the stand that the Dera at Mogha was not a branch but was an independent Dera. The Trial Court decreed the suit. In an appeal filed the decree was reversed and against which appellate decree, an appeal was preferred by the plaintiff. During the pendency of this appeal, the defendant Sh. Som Dass (Dera head at Mogha) died and there was one Sh. Shiam Dass who was the *Chela* of Sh. Som Dass. In these circumstances, it was held that the provision of Order 22 Rule 10 CPC applied, as the rights of Sh. Som Dass devolved upon his *Chela* Sh. Shiam Dass bringing into application the provision of Order 22 Rule 10 CPC. The relevant para of the judgment is para 8 and which was also relied upon by the learned senior counsel for the appellant, and which

reads as under:-

“8. This rule is based on the principle that trial of a suit cannot be brought to an end merely because the interest of a party in the subject matter of the suit has devolved upon another during the pendency of the suit but that suit may be continued against the person acquiring the interest with the leave of the Court. When a suit is brought by or against a person in a representative capacity and there is a devolution of the interest of the representative, the rule that has to be applied is Order 22 Rule 10 and not Rule 3 or 4, whether the devolution takes place as a consequence of death or for any other reason. Order 22 Rule 10, is not confined to devolution of interest of a party by death; it also applied if the head of the mutt or manager of the temple resigns his office or is removed from office. In such a case the successor to the head of the mutt or to the manager of the temple may be substituted as a party under this rule. The word ‘interest’ which is mentioned in this rule means interest in the property, i.e. the subject matter of the suit and the interest is the interest of the person who was the party to the suit.” (Emphasis added)

Clearly therefore right, title and interest in the Dera at Mogha originally vested in Sh. Som Dass and which devolved upon his *Chela* Shiam Dass and consequently Order 22 Rule 10 CPC applied. It was a case of devolution of interest from one person to another thus bringing into application the provision of Order 22 Rule 10 CPC. However, in the present case it is not devolution of interest from the original society to another society/person/entity and as stated above, it is really the issue of representation of the selfsame society, consequently, there is no scope for applicability of Order 22 Rule 10 CPC.

9. The decision in the case of ***Dhurandhar Prasad Singh*** (supra) has also no applicability because that judgment deals with the general ratio under Order 22 Rule 10 CPC that Order 22 Rule 10 CPC is

different from Order 22 Rule 3 and 4 CPC inasmuch as there is no abatement when there is devolution of interest under Order 22 Rule 10 CPC. It has been held in this judgment by the Supreme Court that even after devolution of interest, the suit can well be continued by or against the original parties to the suit and the suit would not abate and which happens when there is death of a party to the suit and legal representatives are not brought on record as per Order 22 Rule 3 or 4 CPC. It has been further held in ***Dhurandhar Prasad Singh's*** case that it is an option upon the person to whom interest in the suit property stands devolved to apply for being substituted in the place of the original party to the suit and if this is not sought to be done then the decision passed in the original suit would bind such successor in interest, unless, fraud is shown in the conduct of the suit.

I do not understand as to how any portion of the ratio as laid in the ***Dhurandhar Prasad Singh's*** case would apply to the facts of the present case.

10. Learned senior counsel for the appellant finally sought to argue that the impugned orders suffer from bias and that since it had been passed after the period of 9 months of arguments it should therefore be set aside. I do not find that these grounds urged should result in setting aside of the impugned order in view of what I have already observed above including with respect to non-applicability of Order 22 Rule 10 CPC and the fact that a suit for possession and mesne profits against a tenant by the society cannot be converted into the inter se fight

as to entitlement to represent the society taken alongwith the fact that there is no resolution of the executive committee of the society to discharge Sh. Dal Chand Jain from conducting the case. I may lastly note as per the Rules and Regulations of the society elections are being conducted every 3 years and the last election was conducted recently in December, 2010, and as per results of which elections, according to the learned senior counsel for respondent no.3, Sh. Dal Chand Jain continues to be the president of the society. In any case, as observed above, any dispute as regards elections or entitlement to represent the society will have to be a subject matter of the independent suit. Merely by making averment that Sh. Dal Chand Jain is acting against the interest of the society cannot mean that Sh. M.R. Jain can automatically arrogate himself to right to represent the society, much less in the absence of court orders or the executive body's resolution in his favour and against Sh. Dal Chand Jain. The appeal accordingly being devoid of merits is dismissed, leaving the parties to bear their own costs.

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11. This appeal is against the order refusing to discharge the advocate appointed by Sh. Dal Chand Jain who is conducting the case on behalf of the society. This appeal will also stand dismissed in view of the reasoning given above with respect to FAO No.400/2006. This appeal is also accordingly dismissed.

JULY 05, 2011
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VALMIKI J. MEHTA, J.